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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45114
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-1145
v.)	
)	
DAVID ALEXANDER GREEN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
<hr/>)	

STATEMENT OF THE CASE

Nature of the Case

David Alexander Green appeals from his judgment of conviction for possession of a controlled substance, methamphetamine. Mr. Green pleaded guilty and the district court imposed a unified sentence of seven years, with two and one-half years fixed. Mr. Green appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On January 11, 2017, an officer with the Boise Police Department contacted Mr. Green at the corner of 9th Street and Fulton for riding a bike without a headlight when required at night. (Presentence Investigation Report (*hereinafter*, PSI), p.2.) A record check revealed that Mr. Green had a felony warrant for his arrest. (PSI, p.3.) A search of Mr. Green revealed multiple small plastic baggies inside a clutch which contained a white crystalline substance inside. (PSI, p.3.) This substance tested presumptively positive for methamphetamine. (PSI, p.3.)

Mr. Green was charged with one count of possession of a controlled substance and one count of possession of drug paraphernalia. (R., p.28.) He pleaded guilty to possession of a controlled substance and the district court imposed a unified sentence of seven years, with two and one-half years fixed. (R., p.44.) Mr. Green appealed. (R., p.55.) He asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of seven years, with two and one-half years fixed, upon Mr. Green following his plea of guilty to possession of a controlled substance?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven Years, With Two And One-Half Years Fixed, Upon Mr. Green Following Plea Of Guilty To Possession Of A Controlled Substance

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294

(1997) (alteration in original)). Here, Mr. Green’s sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Green “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Mr. Green accepted responsibility in this case. In his presentence investigation questionnaire he acknowledged that he was knowingly in the possession of methamphetamine. (PSI, p.3.) He stated that he had struggled with drug addiction for several years and had been using methamphetamine to “maintain.” (PSI, p.3.) Mr. Green reported that he started using methamphetamine when he was fourteen years old. (PSI, p.21.) Regarding the instant offense, Mr. Green stated, “I feel ashamed and I want to quit for good.” (PSI, p.3.)

At the sentencing hearing, counsel noted that, “it’s clear from reading the PSI he has been bedeviled since day one by substance abuse.” (Tr. p.24, Ls.24-25.) Further, Mr. Green “was raised around a substance abuse model. We know his mother was using most of his childhood and then he got to Pocatello into a very different situation and he was kind of on the streets, in a

sense, at a very early age.” (Tr., p.25, Ls.1-4.) Prior to moving to Pocatello, Mr. Green had lived in Iceland with his mother and he had a difficult transition and experience “culture shock” when he moved to Pocatello when he was thirteen. (PSI, p.15.) Counsel for Mr. Green recommended that the court impose a sentence of seven years, with one year fixed, “because that puts him in the queue for programming and it’s making use of more productive time up there at the institution.” (Tr., p.25, Ls.14-18.)

It is clear that Mr. Green suffers from a substance addiction and that he wants to quit using methamphetamine. The instant conviction is a direct result of that addiction. The sentence recommended by counsel would give Mr. Green earlier access to programming, which is what he needs to confront his addiction. Considering this information, Mr. Green submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Green respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 20th day of November, 2017.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of November, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
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